

STATE OF MICHIGAN
COURT OF APPEALS

ALLAN FALK, P.C.,

Plaintiff-Appellant,

v

LINDA OLSON,

Defendant-Appellee.

UNPUBLISHED

March 15, 2011

No. 292855

Wayne Circuit Court

LC No. 08-102027-CK

Before: CAVANAGH, P.J., and JANSEN and SERVITTO, JJ.

JANSEN, J. (*dissenting*).

I respectfully dissent. The appeal in this case was already decided on December 7, 2010, by a panel consisting of Judges BANDSTRA, O'CONNELL, and MURRAY. *Allan Falk PC v Olson*, unpublished opinion per curiam of the Court of Appeals, issued December 7, 2010 (Docket No. 292855). Judges BANDSTRA and MURRAY signed the original majority opinion, concluding that the trial court had appropriately effectuated the parties' agreement to settle the case under the terms of MCR 8.122, had correctly applied the relevant factors, and had properly calculated the amount of attorney fees owed to plaintiff. Judges BANDSTRA and MURRAY also concluded that plaintiff had effectively waived or withdrawn all of its remaining claims, including its claims for interest and costs, when it agreed to settle the case with defendant.

On December 21, 2010, plaintiff moved for reconsideration of the Court's opinion. Given Judge BANDSTRA's pending retirement from the Court, he did not participate in the decision on the motion. The two remaining judges, Judges O'CONNELL and MURRAY, were unable to agree whether to grant the motion for reconsideration. Consequently, the Court's existing opinion was vacated and the matter was reassigned to a new case call panel. *Allan Falk PC v Olson*, unpublished order of the Court of Appeals, entered January 14, 2011 (Docket No. 292855).

I agree with the reasoning and result of the original majority opinion that was released on December 7, 2010. For the reasons stated in that opinion, I believe that the trial court correctly calculated the amount of attorney fees owed to plaintiff and that the court correctly ruled that

plaintiff had effectively waived or withdrawn its claims for interest and costs when it agreed to settle the case. Accordingly, I would affirm.

/s/ Kathleen Jansen